APPENDIX

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Supreme Court of Florida

No. 55,698

WILLIAM D. CHRISTOPHER, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[December 10, 1981]

ADKINS, J.

We have before us a direct appeal from a judgment imposing the death sentence upon William D. Christopher. Jurisdiction is pursuant to article V, section 3(b)(1), Florida Constitution.

The appellant was found guilty of two counts of first-degree murder. The findings of fact by the trial court are as follows:

> The defendant was charged and found guilty of the First Degree Murder of George Ahern and of the First Degree Murder of Bertha Skillin. The jury recommended to the Court in its advisory opinion that the Court impose a sentence of death. The Court is hereby accepting the advisory opinion of the jury and is hereby imposing a sentence of death upon William D. Christopher.
>
> The Court finds that there are sufficient aggravating circumstances to impose the death penalty and there is [sic] insufficient mitigating circumstances to support a sentence of life imprisionment [sic]. The court finds that the aggravating circumstances were:
>
> 1. The defendant was previously convicted of other felonies involving the use of violence to some person. In fact, as much as can be determined from the presentence investigation, it appears that the defendant has been convicted of a great many felonies that did not invoke [sic] the use of force. However, pursuant to the applicable statute, the Court has only considered the felonies involving the use of violence to a person.
>
> On June 19, 1972 in Memphis, Tennessee the defendant, William D. Christopher, was convicted of

(1) assault with intent to commit murder in the first degree and, (2) attempt to commit felony (Rape) along with a non-violent felony. . . .

2. The two capitol [sic] felonies that were commited [sic] by the defendant, William D. Christopher, are especially heinious [sic], atroscous [sic] and cruel. The defendant had a duaghter [sic], Norma Sands, who was born out of wedlock to defendant and Patricia Sands Stock. At the time of the birth of the illegitimate child, the defendant was in prison, so the mother gave the infant up for adoption to one of the murder victims, Bertha Skillin and her husband. Bertha Skillin and Norma moved to Florida and the child was reared in this state. The defendant first met his 14 years [sic] old daughter in December 1975 in Memphis, Tennessee while Norma was in that city for a visit. On approximately the first of August, 1976, the defendant arrived in Naples, Florida and made contact with his daughter, Norma. The defendant was without funds. One of the murder victims, Be.tha Skillin and the other murder victim, her boyfriend, George Ahern, invited the defendant to stay in their apartment. Soon the defendant and his daughter, Norma, were engaged in a sexual affair. Mrs. Skillin discovered that Norma was planning to leave Naples and return to Memphis, Tennessee with the defendant. Mrs. Skillin confronted the defendant on the day of the murders and attempted to call the police. The defendant then killed her with a pistol, and then dragged her body into the bathroom and closed the door. During this time, George Ahern was fishing. He returned to the apartment and the defendant persuaded George Ahern to withdraw $300.00 from his bank account so the defendant could return to Memphis. They went to the bank, withdrew the money and returned to the apartment. When they returned to the apartment the defendant knocked Mr. Ahern down. Mr. Ahern ran for the bedroom and attempted to shut the door. The defendant pushed open the door and shot the victim while [he] was sitting on the bed. The defendant and his daughter then fled to Tennessee where he was apprehended. After apprehension, he confessed to both murders. . . .

Appellant presents six procedural issues upon which he relies for reversal of the sentence of death, remand for a new trial, remand for imposition of a life sentence, or remand for a new sentencing hearing.

The six issues presented for our consideration are as follows:

1. Did the trial court systematically exclude for cause prospective jurors who did not state they were irrevocably committed to vote against the death penalty, but voiced only general, indefinite reservations to capital punishment, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, and article I, sections 9 and 16 of the Florida Constitution?

2. Did the trial court err in admitting appellant's confession because (a) he did not freely and voluntarily confess, and (b) the police failed to honor his request to cut-off questioning, in

violation of the Fifth and Fourteenth Amendments to the United States Constitution, and article I, section 9, of the Florida Constitution.

3. Did the trial court commit reversible error in allowing over defense objections and a motion in limine, testimony regarding the sexual relationship between the appellant and his daughter?

4. Did the trial court err in denying appellant's motion for a medical evaluation and for administration of sodium pentothol at county expense?

5. Did the trial court's granting of the state's motion to preclude the appellant from introducing evidence of his polygraph test render the death sentence unconstitutional?

6. Were the aggravating factors found by the court improper; should mitigating factors have been found; and did the mitigating factors outweigh the aggravating factors?

As to the first issue, the law is settled that the competency of a challenged juror is a mixed question of law and fact and is to be determined by the trial judge in his discretion. Manifest error must be demonstrated before the judge's decision will be disturbed. Singer v. State, 109 So.2d 7, 22 (Fla. 1959). Ashley v. State, 370 So.2d 1191, 1194 (Fla. 3d DCA 1979). No such error has been demonstrated in the case sub judice.

Turning to the second issue, the admissibility of the confession, we find no evidence that the appellant exercised his right to halt the interrogation. The appellant continued his conversation with the interrogating deputies of his own free will.

The test for admissibility of a confession is whether it is freely and voluntarily made. Howell v. State, 66 Fla. 210; 63 So. 421 (1913); Jarriel v. State, 317 So.2d 141 (Fla. 4th DCA 1975), cert. denied, 328 So.2d 845 (Fla. 1976).

Appellant claims improper coercion during the course of the interrogation. A case in which improper coercion was found is Jarriel v. State, cited above. In Jarriel the defendant was improperly urged by direct or implied promises to make a statement. The interrogating officer told defendant his wife would be arrested unless defendant made a statement. 317 So.2d

at 141. No such urging or promising took place in the case sub judice. The confession was freely and voluntarily made, and was, therefore, properly admitted.

Next we proceed to the third issue, concerning the admissibility of the testimony regarding the appellant's sexual relations with his daughter. Appellant's claim is that the prejudicial impact of this evidence far outweighs its probative value, and, therefore, the evidence should not have been admitted. We disagree. The trial judge found that incest was one of the theories upon which the state tried the case, and that incest was a motive for the murders. The state contended that the primary reason for the murders was appellant's jealousy and anger over Ahern's sexual advances toward Norma. Appellant knew that Ahern had fondled Norma's breasts and that he had entered Norma's room at night and lifted her covers to see if she was naked. The state also contended that the abnormal relationship between appellant and his daughter was why he planned on taking Norma away from Naples, and that the plan resulted in two murders because Skillen tried to prevent Norma's departure by calling the police. It is well-established that "any material evidence tending to show motive is admissible on the trial of one charged with the offense of murder in the first degree. . . ." Beard v. State, 131 Fla. 512, 180 So. 1, 2 (1938). See also McVeigh v. State, 73 So.2d 694, 696 (Fla. 1954) appeal dismissed, 348 U.S. 885 (1954); and Dodson v. State, 334 So.2d 305 (Fla. 1st DCA 1976), cert. denied, 341 So.2d 1081 (Fla. 1977).

In Smithie v. State, 88 Fla. 70, 101 So. 276 (1924), a first-degree murder case, this Court held that certain evidence which tended to show an illegitimate intimacy between the defendant and the sister-in-law of the deceased, was admissible. The Court found that "some of the evidence obtained . . . was relevant and perfectly proper, as showing motive or cause for antagonism between the two men. . . ." 101 So. at 279. The Court further determined that "[t]he fact that the evidence also tended to show the defendant to be guilty of another crime, that

of criminal intimacy with a girl not 18 years of age, would not render it inadmissible as evidence of so important an element as motive for the killing of the deceased." Id.

The testimony concerning appellant's sexual relations with his daughter was admissible.

We turn now to the fourth issue on appeal, whether the trial court, during the sentence proceeding, erred in denying the appellant's motion for a medical evaluation and for administration of sodium pentothol at county expense. We consider this issue in light of this Court's pronouncement in the case of Knight v. State, 97 So.2d 115, 118 (Fla. 1957).

> There is no scientifically recognized drug that inevitably causes its subject to speak the truth. The so-called "truth serums", including . . . sodium pentothol, are said to effect states of altered consciousness, so that the subject's ability to associate thoughts and give them inhibited expression is impaired; but no such drug insures pure truth. It is said to produce merely an uninhibited state of mind in which the subject is prone to relate facts not deliberately altered. In 5 University of Florida Law Review 6 (1952) it is said:
>
> > Along with those facts, however, fantasy unfolds; and here lies one of the greatest objections to the accuracy of the truth serum. Since the truth is mixed with impressionistic creations peculiar to the subject, the reliability of any truth serum testimony will depend mostly upon the examiner's interpretive skill and experience. Without such experts, therefore, there is not even a scientific acceptance of the serum's reliability. Moreover, in order for truth serums to bridge the experimental-demonstrable gap, there must be a showing that while the subject is under the influence of such drugs there can be no intentional fabrication. The courts so far have indicated a distrust for the assertion that the subject has no control over his utterances, by regarding statements made under influence of the drug as merely self-serving declarations.

The trial court, in the case sub judice, made the following findings:

> THE COURT: All right. The Court is of the opinion that sodium pentothol comes under the same rules as polygraph examination. It's not admissible. The only time it is admissible in the trial is when both sides would agree to it being considered by a jury.
>
> Due to the fact that it's not admissible, it's not material to the trial, and the Court is not going to require the county to pay for such an examination

> knowing in advance that it's not going to be admitted at the trial. Therefore, the Court is going to deny your motion.
>
> Now this is not to say if you do want to make a proffer you may not do so, but any funds expended on such a test will have to come from the defendant or from the public defender's office.
>
> Now, the Court is going to deny this motion. Now, in the event that we go into a penalty phase trial, the Court will hear further from you as to how it could be presented for the Court to make a decision in the case.

The judge acted properly. Appellant's fourth point is without merit.

We now consider the fifth issue, whether the trial court erred during the sentencing in granting the state's motion to preclude the introduction of polygraph results. Section 921.141, Florida Statutes (1977), is not ambiguous with respect to what evidence is admissible at the sentencing hearing. The statute provides that evidence as to any matter the court deems relevant to sentencing may be admitted. It is within the discretion of the trial court to determine what is relevant in the sentencing proceeding. Provence v. State, 337 So.2d 783, 786 (Fla. 1976), cert. denied, 431 U.S. 969 (1977). Absent a showing of abuse of this discretion we will not disturb the finding of the trial judge. No such abuse has been shown in the case sub judice. The granting of the state's motion to preclude the introduction of the polygraph results was proper.

We now reach the final issue on appeal, the sufficiency of the trial court's findings with respect to aggravating and mitigating factors. The first aggravating factor found by the trial court is that the defendant was previously convicted of other felonies involving the use of violence to some person. Documents introduced by the state demonstrated that he was convicted for assault with intent to commit murder in the first degree, and for an attempt to commit rape. In addition, the appellant admitted the crime of assault with intent to commit first degree murder in one of his taped confessions. Furthermore, the pre-sentence investigation report ordered by the trial judge reflected a conviction for assault with intent to commit first degree murder, and a conviction for attempted rape.

Appellant's challenge to this finding is without merit.

The second aggravating factor found by the trial court is that the murders were heinous, atrocious, or cruel. The facts support this finding. The appellant was in Naples to visit his daughter. He had no money and no place to stay. Bertha Skillen and George Ahern invited appellant to stay in their apartment. When Mrs. Skillen discovered that Norma was planning to leave Naples with the appellant, she attempted to call the police. Appellant shot and killed Skillen at that time. Shortly after this, Ahern returned to the apartment. He and Christopher went to the bank so that Ahern could give Christopher some money. When they returned to the apartment Christopher knocked Ahern down. Ahern then ran for the bedroom and tried to shut the door. Christopher pushed open the door and shot Ahern while Ahern was sitting on the bed.

It is common knowledge that discretion and judgment are essential to the judicial process, and are present at all stages of its progression - arrest, arraignment, trial, verdict, and onward through final appeal. State v. Dixon, 283 So.2d 1, 6 (Fla. 1973), cert. denied, 416 U.S. 943 (1974). Judicial discretion in the context of the sentencing statute, section 921.141, Florida Statutes, must be reasonable and controlled, rather than capricious and discriminatory. Id. at 7. The discretion exercised by the trial judge in entering a sentence of death was reasonable and controlled, as required in Dixon.

We also held in Dixon that when one or more aggravating circumstances are found, the death penalty is presumed proper unless the aggravating circumstance or circumstances are overridden by one or more of the mitigating circumstances. 283 So.2d at 9. In the instant case it does not expressly appear from the specific findings of fact that the trial judge found the existence of any mitigating circumstances. Indeed, his written findings expressly negate the existence of any mitigating circumstances.

The findings of the trial court are supported by the facts

and testimony in the record. No reversible error has been demonstrated. We therefore hold that the judgment and sentence of death upon the appellant, William D. Christopher, are affirmed.

It is so ordered.

BOYD, OVERTON, ALDERMAN and McDONALD, JJ., Concur
SUNDBERG, C.J., Concurs in the result only

An Appeal from the Circuit Court in and for Collier County,

Charles T. Carlton, Judge - Case No. 77-468-CF-A-11-CTC

Jerry Hill, Public Defender and James R. Wulchak and David A. Davis, Assistant Public Defenders, Bartow, Florida,

for Appellant

Jim Smith, Attorney General and James S. Purdy, Assistant Attorney General, Tampa, Florida,

for Appellee

IN THE SUPREME COURT OF FLORIDA

WILLIAM D. CHRISTOPHER,	:	
Petitioner,	:	
vs.	:	Case No. 55,698
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

MOTION FOR REHEARING

The Appellant, WILLIAM CHRISTOPHER, asks this Honorable Court to reconsider the opinion it filed in his case for the following reasons:

1. This Court said on page three of it's opinion that: "...we find no evidence that the Appellant exercised his right to halt the interrogation. The Appellant continued his conversation with the interrogating deputies of his own free will." (Emphasis supplied) This Court, however, has overlooked the following statements made by Christopher during the police interrogation which is some evidence that he wanted to halt the interrogation. Miranda v. Arizona, 384 U.S. 436 (1966):

> CHRISTOPHER: Well, save--
>
> YOUNG: Now wait a minute. Yea, I accused you, for we signed a warrant against you.
>
> CHRISTOPHER: Okay.
>
> YOUNG: Ah--
>
> CHRISTOPHER: Then I got nothing else to say. If you're accusing me of murder, then take me down there.
>
> MILLS: You were accused when you come in here. You knew you were accused--
>
> CHRISTOPHER: That's right. That's right.
>
> MILLS: --you knew what you were accused of, and I told you what the girl was accused of, so don't make out like you don't know what you're accused of.
>
> CHRISTOPHER: Oh, ah,--I know what I'm accused of. I know that I'm accused of both murders.

MILLS: I told you awhile ago you were being charged with both murders.

CHRISTOPHER: Okay then. I got nothing else to say.

YOUNG: You mean it's all right as long as we accuse you of one?

MILLS: But all of a sudden when you're accused of two, you don't--

CHRISTOPHER: I'm not saying that, I know that, didn't I tell you awhile ago that I knew that ya, I was accused of both murders?

YOUNG: Yeah. You--you should know.

CHRISTOPHER: Okay then. What's the need of me saying anything then.

MILLS: What are you upset about?

CHRISTOPHER: You ask me? I'm upset about the fact that you're bringing my daughter up here, like I'm using her in this thing.

YOUNG: I'm asking you--

MILLS: I'm asking you to explain her actions in this thing?
(TR64-65)(Emphasis supplied)

2. This Court also said:

"Relying on Jarriel [v. State 317 So.2d 141 (Fla.4th DCA 1975)], Appellant claims improper coercion during the course of the interrogation. Appellant's reliance on Jarriel is misplaced."

Appellant did not rely upon or even cite Jarriel in his initial or reply briefs, and he requests this Honorable Court revise it's opinion to correct it's statement saying that he did.

3. This Court has overlooked the fact that the murders in this case do not fit into the fact patterns of those murders which this Court has classified as especially heinous, atrocious or cruel. State v. Dixon, 273 So.2d 1 (Fla.1973). Moreover, these murders are indistinguishable from the many murders for which death is the inappropriate sentence. Furman v. Georgia, 408 U.S. 238,313, 33 L.Ed.2d 346, 92 S.Ct. 2726 (1976)(White, concurring) The murders here were quick, instantaneous killings. Flemming v. State, 374 So.2d 954 (Fla.

(1979); Lewis v. State, Case No. 50,857 (Fla.opinion filed April 2, 1981), involving no torture or extended suffering, Knight v. State, 338 So.2d 201 (Fla.1976). The killings, moreover, did not involve any stabbing, Foster v. State, 369 So.2d 928 (Fla.1979) or choking. Peek v. State, 395 So.2d 492 (Fla.1981).

Further, premeditation alone is insufficient to make these murders heinous, atrocious or cruel. Armstrong v. State, Case No. 48,516 (Fla.opinion filed March 26, 1981); Lewis v. State, Case No. 50,851 (Fla.opinion filed April 2, 1981) Nor does the fact that Skillen befriended Christopher make the crime death worthy. Lewis v. State, 377 So.2d 640 (Fla.1979); Kempff v. State, 371 So.2d 1007 (Fla.1979).

These murders, in short, were simple killings, Lewis v. State, supra, which were not heinous, atrocious or cruel and for which death is the inappropriate penalty.

4. Appellant, therefore, asks this Honorable Court to reverse the trial court's judgment and sentence and remand for new trial, or reverse the trial court's sentence and remand for imposition of a sentence of life in prison.

Respectfully submitted,

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

BY: David A. Davis
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Assistant Public Defender

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(813) 533-6715 or 533-1184

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, Florida, 33602, by mail on this 21st day of July, 1981.

David A. Davis
DAVID A. DAVIS

Supreme Court of Florida

THURSDAY, DECEMBER 10, 1981

WILLIAM D. CHRISTOPHER, Appellant,	**	
vs.	**	CASE NO. 55,698
STATE OF FLORIDA, Appellee.	**	Circuit Court Case No. 77-468-CF-A-31 (Collier County)

Received By
DEC 16 1981
Appellate Division
Public Defenders Office

The error asserted in the second ground of the petition for rehearing has been corrected in the opinion. The other grounds of the petition for rehearing are without merit. The opinion having been corrected, the petition for rehearing is denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

jb

cc: Hon. William J. Reagan, Clerk
Hon. Charles T. Carlton, Judge
David A. Davis, Esquire
James S. Purdy, Esquire

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Case No.

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IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM D. CHRISTOPHER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, WILLIAM D. CHRISTOPHER, asks leave to file the attached Petition for Writ of Certiorari to the Supreme Court of Florida without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46. The Petitioner's affidavit in support of this motion is attached hereto.

Respectfully submitted,

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

BY: William C. McLain
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COUNSEL FOR PETITIONER

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vs.

STATE OF FLORIDA,

Respondent.

AFFIDAVIT IN SUPPORT OF PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS

I, WILLIAM D. CHRISTOPHER, being first duly sworn, depose and say that I am the Petitioner in the above-styled case; that in support of my motion to proceed on my Petition for Certiorari without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor; and that I believe I am entitled to redress upon the issues presented in the Petition for Writ of Certiorari.

I further swear that:

1. I was convicted on August 18, 1978, in the Circuit Court for Collier County, Florida, on two counts of first degree murder, and in a single jury trial.

2. I received a sentence of death for each murder and am presently in custody on Death Row at Florida State Prison.

3. I appealed to the Supreme Court of Florida and that Court affirmed all of my convictions and sentences.

4. I am not employed and have no source of income.

5. I do not have any real estate, stocks, bonds, notes, automobiles or any other valuable property.

6. I have been represented by appointed counsel throughout my state court proceedings.

I understand that a false statement or answer to any question in this Affidavit will subject me to penalties for perjury.

William D. Christopher
WILLIAM D. CHRISTOPHER

Subscribed and sworn to before me this 1 day of Feb. 1982.

R. E. Lee
Notary Public

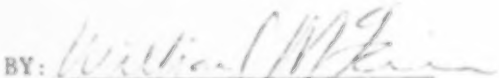
My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES MAR. 25, 1984

CERTIFICATE OF SERVICE

I, WILLIAM C. McLAIN, a member of the Bar of the Supreme Court of the United States and counsel of record for WILLIAM D. CHRISTOPHER, the Petitioner, hereby certify that on February 3, 1982, pursuant to Supreme Court Rule 28, I served a single copy of the foregoing Motion For Leave To Proceed In Forma Pauperis with attached Affidavit on each of the parties as follows:

On the State of Florida, The Respondent, by depositing said copy in the United States Post Office, Bartow, Florida, with first class postage prepaid, properly addressed to James S. Purdy, Assistant Attorney General, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida 33602.

BY: 

WILLIAM C. McLAIN
Assistant Public Defender
Chief, Capital Appeals